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No. 06-379

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In The

Supreme Court of the United States

EMILY ABEL WAGNER,

Petitioner,

versus

THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, ROBERT MATHEWS, IRVING LANE,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of Louisiana, First Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

A. Facts

Ms. Wagner, seeking a Ph.D. in psychology, enrolled in LSU's Graduate School in the Fall 1992 semester. She already possessed a Bachelor's Degree in psychology and a Master's Degree in psychology. At all relevant times, defendant-respondent Irving Lane was the Chair of the Department of Psychology, and defendant-respondent Bob Mathews was Wagner's major professor.

Like most universities, LSU allows doctoral students seven years in which to complete the program; if they have not completed their degree requirements within that time, they are not awarded their degree, although the Graduate School has the discretionary power to extend the deadline. These provisions are clearly stated in the LSU Graduate Handbook:

> The program for the doctoral degree must be completed within seven years from the time a student is classified as a doctoral student. This time limit may not be exceeded except by special permission of the dean of the Graduate School.

The time limit went into effect in 1988, four years before Ms. Wagner arrived at LSU. In practice, all doctoral students are actually allowed seven years plus one extra full semester.

In the Department of Psychology, doctoral students typically spend the first two years taking graduate level courses, then take the General Examination, which is ordinarily the most rigorous test in the doctoral program. The students then spend their remaining time researching and writing the dissertation, which they defend at a Final

Examination. Students who enter the program with a Master's Degree in Psychology – like Ms. Wagner – typically obtain their Ph.D. in four years, and thus the seven-year time limit is not a problem.

Emily Wagner did not pass the General Exam until November 5, 1999, during her final semester in the program. Thus, with only a few *weeks* left in her seven years, Wagner had not submitted a final draft of her dissertation *proposal*, had not performed her research and collected her experimental data, had not written her dissertation, and had not taken the Final Exam.

Aware that she was drastically behind schedule and that she could not possibly finish the program without more time, Ms. Wagner approached her major professor, Respondent Bob Mathews, about her need for an extension. Dr. Mathews told Wagner he would support her request for more time. Mathews then discussed the request with Respondent Irving Lane. As Chair of the Department of Psychology, Dr. Lane was responsible for maintaining the academic integrity of the Department, and he originally opposed the request because he considered Wagner to be a mediocre student whose performance did not merit additional time. Lane testified that "this was probably among the most difficult decisions that I had while I was Chair." Eventually, Lane agreed to support the request, but only upon the condition that the extension of time would be Wagner's final opportunity to obtain her degree.

On December 14, 1999, Mathews and Wagner signed a written agreement that if she failed to attain her degree within the one additional year, she would not be granted any further extensions of time:

> I will complete requirements for the Ph.D. degree by 11/5/2000. I understand that this extension of one year to complete all requirements for my degree, if granted to me by the graduate school, is final.

The agreement also set forth a series of intermediate deadlines that Wagner would be required to satisfy.

At trial, Ms. Wagner asked Dr. Mathews whether he agreed with Dr. Lane's insistence that she would have to finish her degree in the one extra year. He responded: "I agreed with it reluctantly, given that this, like I said, is the only game in town. It was my only chance of helping you finish your degree." In other words, there was a good faith difference of opinion between Mathews, who was the major professor looking out for the interest of his student, and Lane, who was the Chair looking out for the interest of the entire Department. But Mathews also recognized that the only alternative was for Ms. Wagner to be dropped from the program immediately without her degree.

Mathews subsequently submitted a petition to the Graduate School seeking one additional year in the program for Ms. Wagner. Mathews forwarded with the petition a copy of the written agreement and time-line signed by Wagner. In early January 2000, John Larkin, Senior Associate Dean of the Graduate School, granted the petition subject to the condition that Wagner graduate in December 2000 or be eligible to register "degree only" in the Spring 2001 semester.

Ms. Wagner did not complete her remaining degree requirements during the extra year that was granted to her; indeed, she met only one of the six deadlines contained in the time-line she signed in December 1999. At

the end of the extra year, she had not even completed a first *draft* of her dissertation.

The written agreement signed by Wagner in December 1999 included the statement, "I understand that this extension of one year to complete all requirements for my degree, if granted to me by the graduate school, is final." Notwithstanding the clear and unambiguous language, Wagner wrote a letter to Dr. Mathews on January 12, 2001, asking for a second extension of time.

Mathews originally agreed to support the request for a second extension. Mathews testified at trial that his main motivation was to see Ms. Wagner, his student, get her degree, and he was willing to support her in every way he could; therefore, he originally supported the request even though he too had signed the "final" agreement.

However, Dr. Lane strongly opposed a second extension for Ms. Wagner. Lane believed it would compromise the standards of the Department to grant a second extension to Ms. Wagner, particularly in light of the written "final" agreement that had been signed by the parties. On January 19, 2001, Lane met with Mathews and the other members of Wagner's advisory committee and voiced his opinion that the committee should abide by the earlier "final" requirement. At the end of the meeting, there was no resolution to the situation; instead, Mathews and the other committee members agreed to "think about it" some more.

That evening, Dr. Mathews spoke on the telephone with Ms. Wagner, and they discussed again the reasons why she had not completed her degree requirements

during the extra year. The next day, January 20, after considering all of the issues involved in Ms. Wagner's request for a second extension, Mathews wrote her a letter withdrawing his support of her request.

Without the support of her major professor and Chair of the Department, the Graduate School would not consider Ms. Wagner's request for a second extension. Thus, she ran out of time and was automatically dropped from the program without earning her degree.

B. Action Of The Trial Court

In January 2002, Ms. Wagner filed suit in a Louisiana state court against LSU, Dr. Lane, and Dr. Mathews. In her petition, she claims that the seven-year time limit is unconstitutional, and that she was denied due process while a graduate student. She also claims that the defendants arbitrarily and tortiously interfered with her efforts to obtain her doctoral degree.

A bench trial on the merits was held on April 14-15, 2004. At the conclusion of the trial, the judge ruled from the bench in favor of the defendants as to all claims asserted against them. Judgment was entered on May 4, 2004.

Ms. Wagner appealed the judgment to the Louisiana Court of Appeal for the First Circuit. On November 4, 2005, the First Circuit affirmed the trial court judgment in its entirety. Rehearing was denied on December 22, 2005.

Ms. Wagner filed an application with the Supreme Court of Louisiana for a writ of review, but that court denied her application on April 24, 2006.

SUMMARY OF ARGUMENT

A. The Due Process Clause Is Inapplicable

All of Ms. Wagner's legal claims arise under the Due Process Clause. However, no property rights are implicated by Ms. Wagner's allegations; instead, the decision whether to grant or deny a request for more time is a discretionary function of the Graduate School. Therefore, the Due Process Clause and its procedural protections are not even implicated by her allegations.

B. Ms. Wagner Received Due Process

Ms. Wagner received multiple notices of LSU's dissatisfaction with her academic performance, and she was expressly notified of the threat of her possible dismissal. Therefore, under *Board of Curators v. Horowitz*, 435 U.S. 78 (1978), she received due process. Respondents actually extended more protection to Wagner than the minimal requirements established by the Constitution, as they granted Wagner face-to-face meetings with numerous faculty members and administrators.

C. The "Void For Vagueness" Doctrine Is Inapplicable

The "void for vagueness" doctrine does not apply in this civil litigation because the provision regarding extensions of time does not require "exaction of obedience to a rule or standard," nor does it "strip a participant of his rights." Instead, the provision is simply an affirmation of the authority of the Graduate School to extend the deadline. Furthermore, the Graduate School has specific written guidelines to assist both the major professor and

the Dean in determining whether to grant or deny a request for more time.

D. Ms. Wagner Was Not Treated Arbitrarily

Ms. Wagner cannot show she was treated arbitrarily. Each individual request for an extension of time must be considered on its own merits, and such academic decisions are not susceptible of a formulaic approach. The Respondents articulated a legitimate academic basis for their decision not to support a second extension of time for Wagner, and they articulated a legitimate academic basis for their decision to support certain other extensions requested by certain other students.

E. Dr. Lane Conducted Himself Entirely Within Accepted Academic Norms

Dr. Lane conducted himself at all times in a manner consistent with *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985). As Chair of the Department of Psychology, he was the person charged with the ultimate responsibility for maintaining the Department's academic standing and reputation within the Graduate School. His decisions regarding Petitioner's first and second requests for more time were made in good faith, were based on the Petitioner's poor academic progress through the doctoral program, and were consistent with accepted academic norms.

F. Ms. Wagner Misconstrues The Departmental Handbook

The 1992 Graduate Catalog required all doctoral students to complete the program within seven years. The 1992 handbook for the Department of Psychology stated that "the maximum time allowed from entrance to the completion of the Ph.D. is nine years." The policies are not inconsistent, and the department policy does not create any right or entitlement to nine years in the program. Instead, the department policy simply establishes a maximum of nine years in the program, regardless of whether the Graduate School might be inclined to grant more time.

G. The "Final" Agreement Is Perfectly Lawful

There is nothing unlawful or unconstitutional about the "final" agreement. That agreement did not require Ms. Wagner to sign away any rights, nor did it require her to waive notice of anything. She simply agreed that the first extension of time would be her final opportunity to obtain her degree, and that no additional extensions of time would be granted to her. The language of the agreement is clear and explicit, and Wagner's assertion that she did not understand the meaning of the term "final" is not credible.

ARGUMENT

A. The Due Process Clause Is Inapplicable

Ms. Wagner claims that she was denied due process.

The Due Process Clause of the Fourteenth Amendment says that the States shall not "deprive any person of

life, liberty, or property, without due process of law." The Due Process Clause itself does not create any "property" rights; instead, such rights must be created and defined from independent sources, such as state law. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

In the present case, LSU afforded Ms. Wagner precisely the same opportunity that was afforded to all doctoral students: to complete all requirements for her degree within seven years. Once Ms. Wagner was admitted to the doctoral program in the Fall 1992 semester, perhaps she had a property right subject to due process protection to continue for the allotted seven years, provided she continued to satisfy all academic requirements.

However, any right to continue in the program ceased to exist when Ms. Wagner failed to obtain her degree within seven years. Once her seven years elapsed, she had no right at all to remain in the program; instead, her only option was to obtain an extension of time from the Graduate School. The Graduate School has the discretion to grant or deny such a petition; the Graduate School exercised its discretion to grant the plaintiff's first request for an extension, and the Graduate School exercised its discretion and refused to consider the plaintiff's second request because it was not supported by her major professor and the Chair of the Department.

Because the decision to grant or deny a petition for more time is a discretionary function of the Graduate School, there were no property rights at stake when Wagner sought her extensions, and the Due Process Clause and its procedural protections are not even implicated by her allegations. Both the trial court and the

Louisiana First Circuit Court of Appeal concluded that the Due Process Clause did not apply to Wagner's claims.

Ms. Wagner argues that she has a right "in the totality of her investment in her education," and she refers to the time, money, and effort she spent during her eight years in the program. But "to have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Roth*, 408 U.S. at 577. Ms. Wagner can articulate no such legitimate entitlement.

Ms. Wagner argues that "Louisiana grants a property right to education" and that she has "the right not to be dismissed from a program, once enrolled, unless there is a legitimate academic reason and unless the state follows due process." (Pet. at 16-17.) But she cites no specific law in support of her argument; instead, she cites broad introductory language from the Preamble to Article VIII of the Louisiana Constitution and from the Declaration of Purpose accompanying the Louisiana Preservation of Educational Process Act. But the Preamble to Article VIII merely states that "the goal of the public educational system is to provide learning environments . . . that are humane, just, and designed to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential." This language does nothing to create a specific property right in favor of Ms. Wagner to continue in the doctoral program beyond seven years. And the Declaration of Purpose specifically states:

> It is recognized that attendance by a student . . . at an institution of higher learning [is] not compulsory as to individuals concerned. *Their presence at*

> *the institution of higher learning is a privilege, not a right.*

La. R.S. 17:3101 (emphasis added).

Thus, Ms. Wagner's argument is undone by the very statute upon which she relies for support.

B. Ms. Wagner Received Due Process

Ms. Wagner argues that she was denied due process when she was dropped from the program in January 2001.

Even though the Due Process Clause is not implicated by Ms. Wagner's allegations, the evidence is clear that the Respondents afforded her significantly more process than the minimal safeguards required by the Constitution. The definitive case is *Board of Curators v. Horowitz*, 435 U.S. 78 (1978). Under *Horowitz*, a student dismissed for academic reasons is not entitled to a hearing before the decision-maker; instead, it is only necessary that the student receive notice of the school's dissatisfaction with his or her academic performance and the threat of possible dismissal. *Id.* at 85.

Unquestionably, Ms. Wagner received notice of the Department's dissatisfaction with her academic performance and was aware of the threat of her possible dismissal. The Graduate Catalog stated that "the program for the doctoral degree must be completed within seven years from the time a student is classified as a doctoral student," and that "this time limit may not be exceeded except by special permission of the dean of the Graduate School." Wagner testified that she was very familiar with the contents of the graduate catalog. She knew that she failed to complete her program within the seven years. She knew

that she was allowed to continue in the program only because the Graduate School granted her an extension of time. She knew that she signed a written agreement that the first extension was "final." She knew that she received a letter during the extra year from the Department expressly notifying her that she had to graduate in the Fall 2000 semester or be eligible to register "degree only" in the Spring 2001 semester. And she knew that she did not complete the degree requirements during the extra year.

Furthermore, even though *Horowitz* did not entitle Ms. Wagner to a hearing prior to her dismissal, she was granted numerous face-to-face meetings with faculty members and administrators in her effort to get a second extension. On January 23, 2001, she met with John Larkin, Senior Associate Dean of the Graduate School. On February 2, 2001, she met with Jeanine Kahn, Assistant Vice Chancellor for Academic Affairs. On February 5, 2001, she met with George Strain, Interim Vice Chancellor for Research and Graduate Studies. On February 22, 2001, she met with Respondents Irving Lane and Bob Mathews. And on May 9, she met with Mark Emmert, Chancellor of Louisiana State University.

Ms. Wagner alleges that as she met with these faculty members and administrators, they did not always follow the appeal procedures established in PS-48, a University document governing student appeals. However, every single faculty member and administrator who testified at trial stated that PS-48 does not apply to a student like Ms. Wagner who simply runs out of her allotted time. The individual academic departments have the independent authority to decide which students they wish to accept or reject. For example, when a student desires to enroll in the graduate program, their application must be separately

accepted by both the Graduate School and the academic department. If a student's application is accepted by the Graduate School but rejected by the department, that student may not pursue a Ph.D. at LSU in that department, and the Graduate School cannot force the department to accept the student.

Similarly, if a student runs out of time and desires an extension, the academic department must first decide whether it wants to continue the student. If the department does not want to continue the student, the Graduate School does not have the authority to order the department to take the student back. Thus, when Dr. Lane and Dr. Mathews withdrew their support and Ms. Wagner filed an appeal under PS-48, there was no remedy available to her, and PS-48 could not apply. Ms. Wagner's only option was to convince her advisory committee (including Mathews) to reinstate their support for her request for a second extension.

Finally, Wagner argues that LSU failed to comply with the Louisiana Preservation of Educational Process Act, which requires that "the notice of expulsion or dismissal shall specifically set forth the ground or grounds upon which expulsion or dismissal is based, as well as contain a short and clear statement of the facts upon which the expulsion or dismissal is based." La. R.S. 37:3104. However, Ms. Wagner fails to quote the prior statute, which expressly limits the Act's application to students who are expelled or dismissed for participating in riots on the grounds of the institution, for intentionally destroying or defacing property belonging to the institution, or for refusing to obey any lawful order of a peace officer at the institution. La. R.S. 37:3103. The Act has no application whatsoever to Ms. Wagner's situation.

C. The "Void For Vagueness" Doctrine Is Inapplicable

Ms. Wagner argues that the provision in the handbook regarding extensions of time is unconstitutionally vague. She also makes the related argument that the provision is unconstitutional because it has no standards and vests the Dean of the Graduate School with unfettered discretion to grant or deny requests for more time.[1]

The "void for vagueness" doctrine requires that penal statutes be drafted with minimal guidelines to prevent arbitrary and/or discriminatory enforcement. *See, e.g., Kolender v. Lawson*, 461 U.S. 358 (1983). Application of the doctrine has generally been limited to criminal laws; however, the Court has applied the doctrine to civil cases in which "the exaction of obedience to a rule or standard . . . was so vague and indefinite as really to be no rule or standard at all. In short, the exaction must strip a participant of his rights to come within the principle of the cases." *Boutilier v. Immigration & Naturalization Service*, 387 U.S. 118, 128 (1967). The Court has also stated that "when the Government is acting as patron rather than as sovereign, the consequences of imprecision are not

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[1] At several places in her Petition, Ms. Wagner states that the seven-year limit itself – as opposed to the discretionary authority of the Graduate School to extend the limit – is unconstitutional. (Pet. at 21-25.) However, she makes no attempt at any legal analysis to show that the seven-year limit is unconstitutional. Instead, all of her substantive arguments are directed at the Graduate School's authority to extend the deadline. In any event, the trial court made an express finding that the time limit is constitutional: "There is good reason that has been stated in this Court why a time period must be set that has an effect on the rating and standing at the University. The testimony of Dr. Emmert was very instructive on this point. There is a basis for it. It is not arbitrary in any way. There are no – on its face, it is not facially unconstitutional."

constitutionally severe." *National Endowment For The Arts v. Finley*, 524 U.S. 569, 589 (1998).

The "void for vagueness" doctrine has no application in the present matter. The Graduate Handbook states that "this [seven-year] time limit may not be exceeded except by special permission of the dean of the Graduate School." In the language of *Boutilier*, the provision does not require "exaction of obedience to a rule or standard," nor does it "strip a participant of his rights." Rather, the provision is simply an affirmation that the Graduate School has the authority to extend the time-limit. Like the federal government in *Finley*, the State of Louisiana, acting through the LSU Board of Supervisors, was not acting as a sovereign when it vested the Graduate School with the authority to extend the time-limit.

Furthermore, and contrary to Ms. Wagner's assertions, the Dean of the Graduate School does not have absolute discretion to grant or deny petitions; instead, the Graduate School has specific written guidelines to assist both the major professor and the Dean in determining whether to grant or deny a request for more time:

1. Petitions must be initiated by the student's major professor no earlier than the semester immediately preceding the 7-year deadline for completion of the degree.

2. The petition must address the extenuating circumstances related to the student's progress toward the degree and failure to complete by the deadline.

3. The petition should elaborate upon the student's current status in the program and his/her progress toward completion of the degree requirements.

4. The petition should include a specific time-frame in the request for an extension. The requested extension may not exceed one academic year. No open-ended extensions will be granted.

5. The petition must satisfy the above criteria and must be unanimously supported and signed by the chair/head and the student's committee, excluding the Dean's Representative, before it will be considered by the graduate dean.

Thus, the guidelines require that the Graduate School be presented with a petition that articulates specific extenuating circumstances for the student's failure to graduate on time, that articulates the student's current standing in the program, and that articulates a specific time-frame for progress towards the degree. The guidelines were available in the Graduate School office to both faculty and students.

D. Ms. Wagner Was Not Treated Arbitrarily

Not only has Ms. Wagner failed to show that the extension provision is facially unconstitutional, she has failed to show that it was applied in discriminatory fashion. In her Petition, she refers to sixty-two other graduate students who allegedly received at least two extensions, and she argues that because she was treated differently – because she was only allowed one extension – she was treated unlawfully. She does not claim that she was discriminated against on the basis of any suspect category, she simply claims that she was treated arbitrarily.

The Respondents have articulated a basis, in detail and at great length, for their decision not to grant a second extension to Ms. Wagner: she made extremely poor progress during her allotted seven years, her own major professor felt she lacked "basic research and writing skills," the Chair of the Department felt that her performance in the program was "unsatisfactory" and "poor," she signed an agreement that was crystal clear and utterly unambiguous that her first extension of time was her final opportunity to obtain her degree, and she failed to complete the academic requirements for her degree even after *eight* years.

At trial, Ms. Wagner questioned Dr. Lane and Dr. Mathews about two of the students on the list of sixty-two. In response, Lane and Mathews articulated legitimate academic justifications for granting additional time to those students. Thus, not only did the Respondents articulate legitimate academic reasons for *not* granting more time to Ms. Wagner, they also articulated legitimate academic reasons why they *did* grant more time to the graduate students regarding whom they were questioned.

Finally, the decision whether to grant an extension of time to a student is precisely the sort of "genuinely academic decision" referred to in *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985). Such academic decisions are simply not susceptible of the kind of formulaic approach that Ms. Wagner would impose on LSU. Instead, each individual case must be considered on its own individual merits. The trial court made an express finding regarding this precise issue:

> If there are extenuating circumstances, those extenuating circumstances are evaluated. And it

> seems that LSU, in all instances that were referred to, had evaluated, not just your circumstances, but other students' circumstances, and taken each on a case-by-case basis and utilized their discretion that they properly had in determining whether or not to allow further extensions and time within which to complete your work.
>
> As the Louisiana First Circuit noted:
>
> Clearly, while all students exceeding the seven-year limit may be "similarly situated" in that they did not meet the degree requirements within the designated time limit, they may not be similarly situated with regard to the particular circumstances for that failure or their academic, research, and writing abilities.

E. Dr. Lane Conducted Himself Entirely Within Accepted Academic Norms

Ms. Wagner claims that Dr. Lane denied her due process on several occasions, including in December 1999, when he conditioned his support of her first extension on her signing the written agreement with the "final" language, and again in January 2001, when he refused to support her request for a second extension.

Ewing is the definitive case establishing the substantive due process protections to which a student is entitled regarding an adverse academic decision. In *Ewing*, the Court imposed a heightened burden on students seeking judicial review of the substance of academic decisions:

> When judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty's professional judgment. Plainly they may not override it

> unless it is such a substantial departure from the accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Id. at 225.

Thus, Ms. Wagner's burden under *Ewing* is to show that Dr. Lane's conduct amounted to a substantial departure from accepted academic norms.

Regarding the first request for more time, the Respondents were faced with a request from a student who did not come close to finishing her program in the allotted seven years. Students who enter the program with a Master's Degree, like Ms. Wagner, typically take the General Exam at the end of the third year and complete the program in four years. Ms. Wagner did not even pass the General Exam until November 1999, just a few weeks prior to the expiration of her seven years. Dr. Lane felt that Ms. Wagner's academic performance was "unsatisfactory" and "poor." Under these circumstances, it would have been entirely reasonable and perfectly in accordance with accepted academic norms to have immediately dropped Ms. Wagner from the program and not to have supported her *first* request for additional time. Instead, Lane agreed to support the request, but subject to the condition that she would not be granted any further extensions. Lane exercised his professional judgment in good faith and conducted himself totally in accordance with accepted academic norms.

In January 2001, when the plaintiff requested the second extension of time, Dr. Lane was now faced with a request from a student with a demonstrated record of poor

progress who was unable to complete her degree requirements even after *eight* years in the program. Even more significantly, Ms. Wagner had previously signed a clear and unambiguous agreement that her first extension was final. Nothing could have been more reasonable than for Lane, as Chair of the Department and the person charged with the ultimate responsibility for maintaining the Department's academic standing and reputation within the Graduate School, to expect that everyone would abide by the express terms of the "final" agreement.

Both the trial court and the Louisiana First Circuit expressly stated that the decision not to grant the second extension was reasonable.

F. Ms. Wagner Misconstrues The Departmental Handbook

The 1992 Graduate Catalog required all doctoral students to complete the program within seven years. The 1992 handbook for the Department of Psychology stated that "the maximum time allowed from entrance to the completion of the Ph.D. is nine years." Wagner argues that she actually had a right under the departmental policy to a full nine years in the program.

The policies are not inconsistent. The Graduate School policy entitles the graduate student to seven years, after which he/she may remain enrolled only if a discretionary extension is granted by the Graduate School. At the same time, the policy of the Department of Psychology establishes a maximum of nine years, regardless of whether the Graduate School might consider an extension of time. The

department policy does not create any right or entitlement, it simply plāces a ceiling on the limit of time a student has.

Such particularized departmental policies are specifically contemplated by the Graduate School Catalog, which states: "Satisfaction of the minimum requirements of the Graduate School as stipulated in this catalog in no way relieves doctoral students of responsibility for satisfying any additional requirements deemed appropriate by the graduate faculty of the degree programs in which they are enrolled."

Respondents also reiterate that Ms. Wagner *knew* the Graduate School would not allow her to continue beyond seven years without an extension of time. Her claim that she actually had a right to nine years is not supported by the evidence and is contrary to her own personal knowledge.

G. The "Final" Agreement Is Perfectly Lawful

Citing *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174 (1972), Ms. Wagner characterizes the "final" agreement that she signed in December 1991 as an unconstitutional "educational cognovit."

Overmyer is distinguishable legally and factually. That case dealt specifically with the "ancient legal device" of the cognovit judgment, whereby a debtor confesses judgment against himself and waives in advance his right to notice, hearing, and possibly even appearance. *Id.* at 176.

Conversely, Ms. Wagner was not forced to sign away any rights, nor did she waive notice of anything. She simply agreed that the first extension of time would be her

final opportunity to obtain her degree, and that no additional extensions of time would be granted to her. It would have been perfectly lawful for Lane and Mathews to agree amongst themselves, without ever informing Ms. Wagner, that they would not support a second extension. Instead, they made her aware of the condition, and she signed her acknowledgment of the condition when she executed the "final" agreement. There is absolutely nothing inappropriate, unlawful, or unconstitutional about that agreement.

Ms. Wagner argues – as she has throughout this litigation – that the "final" agreement should be invalidated because she never understood "final" to mean that she would not be granted any further extensions of time. But the language of the agreement is clear and explicit: "This extension of one year to complete all requirements for my degree, if granted to me by the graduate school, is final." In his oral reasons for judgment, the trial judge made a specific finding that the language was clear and unambiguous:

> It is so clear and unambiguous that it's hard to fathom anyone not understanding exactly what those words say.

The First Circuit agreed:

> [W]e conclude that the provision that the one-year extension, if granted, was "final" is not susceptible to more than one interpretation. Rather, the language is clear in its meaning that this would be the only one-year extension allowed.

CONCLUSION

All of the legal arguments contained in Ms. Wagner's Petition to this Court arise under the Due Process Clause, yet there were no property or liberty interests at stake that would give rise to a due process claim. Furthermore, even if she could demonstrate such a right, the evidence shows that she received due process and was treated at all times in a manner consistent with accepted academic norms. She has failed to articulate any legitimate reason why this Court should grant her Petition.

The Petition should be denied.

Respectfully submitted,

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